84-1505

No. .....

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In the Supreme Court of the United States

OCTOBER TERM, 1984

THOMAS A. CHAMBERS, JR.,
Petitioner,

v.

THE HONORABLE WILLIAM HENDERSON,
Judge of the District Court,
Oklahoma County, Oklahoma,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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March, 1985

QUESTIONS PRESENTED

Question One: Does the privilege against self-incrimination extend to civil proceedings?

Question Two: Does the preparation and submission of IRS tax returns, Social Security Administration records and Veterans Administration records to the appropriate agency and the retention by that agency of those files constitute waiver of the privilege against self-incrimination?

Question Three: If a person gives limited information concerning his Internal Revenue records, Social Security Administration records and Veterans Administration records, is this a waiver of his Fifth Amendment privilege?

Question Four: Does a person have a reasonable expectation of privacy pursuant to the Privacy Act of 1974, if he has submitted information to the United States Government in the form of Internal Revenue Service records, Veterans Administration records and Social Security Administration records?

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Order of the Oklahoma Supreme Court Denying Writ of Prohibition

APPENDIX B:
Order Directing Thomas A. Chambers, Jr., to Execute and Deliver to Plaintiff His Consent and Permission in Writing for Her to Inspect and Copy His Records in the Veterans Administration and Social Security Administration

APPENDIX C:
Fifth Amendment to the U.S. Constitution

APPENDIX D:
Fourteenth Amendment to the U.S. Constitution

APPENDIX E:
5 U.S.C. Sec. 552a

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42 U.S.C. Sec. 1306

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No. .....

In the
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Oklahoma County, Oklahoma,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

The petitioner, Thomas A. Chambers, Jr., prays that a Writ of Certiorari issue to review the denial of Writ of Prohibition by the Oklahoma Supreme Court.

OPINIONS BELOW

The Order of the Oklahoma Supreme Court is set out in Appendix A and is a non-published opinion.

The Oklahoma County District Court Order, entered on December 7, 1984, is set out in Appendix B.

JURISDICTION

The Opinion sought to be reviewed was entered by the Oklahoma Supreme Court on January 23, 1985, and mailed to the petitioner on the same date.

The Order of the Oklahoma County District Court, State of Oklahoma, was entered on December 7, 1984, and timely appealed to the Oklahoma Supreme Court.

The jurisdiction of this Court is invoked under Tit. 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment to the United States Constitution:
See Appendix C.

Fourteenth Amendment to the United States Constitution:
See Appendix D.

Tit. 5 U.S.C. Sec. 552a:
See Appendix E.

Tit. 42 U.S.C. Sec. 1306:
See Appendix F.

Tit. 38 U.S.C. Sec. 3301:
See Appendix G.

STATEMENT OF THE CASE

The petitioner, Thomas A. Chambers, age 62, and plaintiff, Kay Chambers, age 38, were married on or about December 13, 1970. The plaintiff filed for Divorce in Oklahoma County on May 23, 1983, and subsequently, it was ascertained that the marriage was void ab initio. Kay Chambers subsequently added petitioner's brother, former wife and a purchaser of real estate from petitioner's former wife as co-defendants in the divorce action. The petitioner has received Veteran's benefits since approximately 1946, stem-

ming from World War II injuries, and Social Security benefits since approximately 1957 based upon the same World War II disability. The petitioner had not received benefits for the plaintiff.

A compulsory deposition was conducted by the plaintiff of petitioner on June 30, 1983, wherein the petitioner gave information concerning the amount, source and reason for disability benefits from the Veteran's Administration and Social Security Administration as the trial court needed such information to determine correct amounts of income. The petitioner, subsequent to the deposition, sought to invoke the Fifth Amendment Privilege after discovering potential possibilities of prosecution, especially if the plaintiff had the documentary information from Veterans Administration files and Social Security files.

The trial court ruled that the petitioner had waived any privilege that he might have as to his Veteran's Administration and Social Security files because he had waived his Fifth Amendment privilege by partially testifying about his income, source and reason therefor on said matters and did not have the expectation of privacy of confidentiality since the records had been placed in the hands of a third party — that being the United States Agencies. Further, the trial court ruled that the petitioner must consent to the inspection and photocopying of any and all materials in the Veterans Administration and Social Security files and that the petitioner must answer any additional questions concerning his Social Security and Veterans Administration files.

The Oklahoma Supreme Court refused to assume original jurisdiction in a Writ of Prohibition. (See Appendix "B") Immediately thereafter, the petitioner notified opposing counsel of intention to appeal. Plaintiff, Kay Chambers, obtained an order from the trial court ordering petitioner to sign the release of information forms for the Veteran's files and Social Security files by March 1, 1985, or face contempt of court charges, which is set for March 8, 1985 at 9:00 a.m. The petitioner faces the dilemma of exercising the Fifth Amendment privilege and going to jail or complying with the Orders of the trial court.

REASONS FOR GRANTING THE WRIT

The Oklahoma Supreme Court and the Oklahoma County District Court, State of Oklahoma, in overruling the petitioner's privilege against self-incrimination and his alleged waiver of his Fifth Amendment Privilege and right to privacy was an abuse of discretion by the courts and placed the petitioner in serious jeopardy. He is faced with being placed in jail for contempt of court for invoking his Fifth Amendment Privilege and right to privacy or divulging the information and facing the potential criminal consequences of divulging that information.

The Present Petition for Writ of Certiorari presents a situation where a state court of last resort has decided an important question of federal law which has not been, but should be, settled completely by this Court.

I. DOES THE PRIVILEGE AGAINST SELF-INCRIMINATION EXTEND TO CIVIL PROCEEDINGS?

The United States Constitution guarantees that no person shall be compelled to be a witness against himself when he is threatened with deprivation of his liberty. *In re: Gault,* 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). That Fifth Amendment privilege extends to whatever form of communications might be sought; for example, compulsion to produce one's papers. *Gilbert* v. *California,* 388 U.S. 263, 87 S.Ct. 1951, 18 L.Ed.2d 1178 (1967).

This privilege is also intended to secure an individual against compulsory testimony against himself by protecting him from extended concessions and examinations in court proceedings by compulsory methods. *Burdeau* v. *McDowell,* 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048, 13 A.L.R. 1159 (1921); and this Constitutional privilege is intended to shield guilty and imprudent as well as innocent and foresighted. *Marchetti* v. *United States,* 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889 (1968).

Exposure to perjury or other criminal charges is a sufficient basis for a witness' invocation of privilege against self-incrimination. *People* v. *Shapiro,* 50 N.Y.2d 747, 431 N.Y.S.2d 422, 409 N.E.2d 897 (1980); and the right to assert one's Fifth Amendment right does not depend upon the likelihood, but upon the possibility of prosecution, therefore a judge's prediction on the likelihood of prosecution is not dispositive on the issue. *In re: Folding Carton Antitrust Litigation,* 609 F.2d 867 (1979).

The Fifth Amendment privilege against self-incrimination has been held to extend to the compulsory production

of personal books and records. For almost 100 years the United States Supreme Court has consistently held that the privilege, although commonly termed "testimonial", also extends to private papers and documents. See *Boyd* v. *United States,* 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886). The Oklahoma courts have never deviated from the federal position as to application of the privilege to books and records of the party asserting the privilege. *Rey* v. *Means,* 575 P.2d 116 (Okl. 1978).

Since the Veterans Administration records and Social Security Administration records in question were sought under Oklahoma discovery statutes, enforceable by court-ordered sanctions, including contempt of court and being jailed as in the instant case herein, the element of required production or compulsion is readily established. In this case, the act of compulsory signing of a release of information form for the Veterans Administration and Social Security Administration is not in and of itself incriminating; rather, it is the content of those files which is the problem, that is, either may contain incriminating evidence or lead to incriminating evidence.

The Fifth Amendment privilege against self-incrimination is a fundamental right, and the allowance of a witness to assert this privilege has always been liberally construed. *In re Corrugated Container Antitrust Litigation,* 661 F.2d 1145 (7th Cir. 1981).

Speaking to this, the United States Supreme Court has stated that the Court:

> "has always broadly construed its protection to assure that an individual is not compelled to produce evidence

> which later may be used against him as an accused in a criminal action." *Maness* v. *Meyers*, 419 U.S. 449, 462, 95 S.Ct. 584, 593, 42 L.Ed.2d 574 (1975).

It has been stated that ". . . [t]his Court has been zealous to safeguard the values that underlie the privilege." And that this Fifth Amendment privilege against self-incrimination protects against any disclosures which a witness reasonably believes could be used in criminal prosecution or could lead to other evidence that might be so used. *Kastigar* v. *United States*, 406 U.S. 441, 445, 92 S.Ct. 1653, 1656, 32 L.Ed.2d 212 (1972).

The privilege can be asserted by a witness in a civil case "where only a *remote possibility* of criminal prosecution exists." *In re Mid-Atlantic Toyota Antitrust Litigation*, 92 F.R.D. 358, 360 (1981). And the privilege should not be overridden unless it is *"perfectly clear . . . that* the witness is mistaken, and *that the answer*[*s*] *cannot possibly tend to incriminate."* (Emphasis supplied.) *Hoffman* v. *United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 818, 95 L.Ed. 1118 (1951).

The court must liberally construe the granting of the privilege, and all doubts must be resolved in favor of the person claiming the privilege. *In re Corrugated Container Antitrust Litigation*, supra. In fact, the witness is to be allowed "great latitude" in "judging for himself what may be the effect of his answer." *Brunner* v. *United States*, 190 F.2d 167, 168 (9th Cir. 1951).

> "First, and most fundamental, as this Court recently held, the protection of the Fifth Amendment applies so long as there is a *possibility* of prosecution, regardless of a judge's assessment of the likelihood of prosecu-

tion." *In re Corrugated Container Antitrust Litigation,* supra. See also *In re Folding Carton Antitrust Litigation, Appeal of R. Harper Brown,* 609 F.2d 867 (7th Cir. 1979).

It has also been held that a witness is justified in refusing to answer unless the danger is only imaginary. *In re Master Key Litigation,* 507 F.2d 292, 293 (9th Cir. 1974).

The Fifth Amendment privilege against self-incrimination not only applies to evidence which may directly lead to criminal prosecution, but also includes "information which would furnish a link in the chain of evidence that could lead to prosecution." *Maness* v. *Meyers,* supra; *Hoffman* v. *United States,* supra.

Petitioner contends that if he were compelled to produce the documents and answer the questions to which he has objected, the Plaintiff could then use the information as a link to evidence which could *possibly* be used against the petitioner. In this vein, the petitioner would also show the Court that:

> "Whether an answer 'would furnish a link in the chain of evidence needed to prosecute' has also been liberally construed." *United States* v. *Chandler,* 380 F.2d 993, 997 (2d Cir. 1967).

II. DOES THE PREPARATION AND SUBMISSION OF SOCIAL SECURITY ADMINISTRATION RECORDS AND VETERANS ADMINISTRATION RECORDS TO THE APPROPRIATE AGENCY AND THE RETENTION BY THAT AGENCY OF THOSE FILES CONSTITUTE WAIVER OF THE PRIVILEGE AGAINST SELF-INCRIMINATION?

Tax returns as a species of personal books, records, and documents have been expressly held by the Oklahoma Supreme Court to be within scope of the privilege when timely exercised. *Giles* v. *Doggett,* 500 P.2d at 575, as to a request to produce books and records generally which included income tax returns; *Rey* v. *Means,* 575 P.2d at 120, as to tax returns specifically.

In *Rey* v. *Means,* supra, the Oklahoma Supreme Court dealt with the contention that the filing of an income tax return constituted a waiver of the privilege against self-incrimination under *Garner* v. *United States,* 424 U.S. 648, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976). Speaking to the holding in *Garner*, the court, at 575 P.2d 120, said:

> "There, the privilege was not allowed upon the introduction by the government of an income tax return which showed Garner's occupation to be a gambler. By the filing of the return, Garner was found to have waived his privileg of self-incrimination. The opinion noted the choice is to file or remain silent. One cannot file a return which makes disclosures and concurrently claim the privilege. *Garner, supra, is an introduction into evidence problem. Garner is not a production of document problem.* [Emphasis added.] Opposing party, the government, already had the tax return. Its holding might be considered in determining if the tax return was self-incriminating but that the privilege

against its use had been waived. *Garner* had no effect on *the compelled act of producing the document* and filing the return is not waiver as to the effect of that compelled act." (Emphasis by the Court.)

The distinction referenced by the Oklahoma Supreme Court in *Rey* v. *Means,* supra, is applicable to the case at bar. Plaintiff in the trial court sought and required the petitioner under compulsion to produce for her inspection and copying his Social Security and Veterans Administration records which had information which could lead to evidence, or be a link in the chain of evidence of a potentially incriminating character. Petitioner is under threat of contempt of court and jail by trial court if he does not sign the release of information forms. By the same analogy, the same test would apply to the Veterans Administration records and the Social Security Administration records. Both are in the same context as the Internal Revenue Service records that the petitioner herein has filed.

III. IF A PERSON GIVES LIMITED INFORMATION CONCERNING HIS SOCIAL SECURITY ADMINISTRATION AND VETERANS' ADMINISTRATION RECORDS, DOES HE WAIVE HIS FIFTH AMENDMENT PRIVILEGE?

Under certain circumstances an individual can waive his privilege against self-incrimination as a personal right and can be waived under certain circumstances; however, the petitioner herein contends that he has never waived his privilege by giving limited information about matters relating to his Social Security benefits and Veterans benefits. The waiver must be *knowingly* and *voluntarily* made. (Emphasis added.) *Gardner* v. *Broderick,* 392 U.S. 273, 88 S.Ct.

1913, 20 L.Ed.2d 1082 (1968); and it must be made with sufficient awareness of relevant circumstances and its likely circumstances. *United States* v. *Larry*, 536 F.2d 1149, 42 A.L.R. Fed. 783, *cert. den.* 429 U.S. 984, 97 S.Ct. 502, 50 L.Ed.2d 595 (CA6 Mich. 1976).

In this regard, the petitioner was at a compelled deposition, has a limited education, was unaware of the potential of criminal prosecution at the giving of certain information at the deposition and did not elaborate on the information, which was of a type that the Social Security and Veterans Administration would normally verify anyway, that is, type of income, source, amount, etc.

The consensus of opinion regarding the federal rule appears to be that a witness who testifies under compulsion in a civil proceeding does not waive his privilege against self-incrimination by testifying to matters which do not amount to an admission of guilt — a distinction being made between one who voluntarily and one who involuntarily appears as a witness. *McCarthy* v. *Arndstein*, 266 U.S. 34, 45 S.Ct. 16, 69 L.Ed. 158 (1924). Likewise with an individual who answered incriminating questions at a deposition pursuant to discovery code did not waive his Fifth Amendment privilege when he invoked the privilege at trial. *Ex Parte Berman*, 105 Cal.App. 37, 287 P. 125 (1930); and answering interrogatories with a similar result. See *Marshall* v. *Riley*, 7 Ga. 367 (1849).

Partial disclosure does not waive the Fifth Amendment privilege. The Supreme Court stated that an involuntary bankrupt does not, by filing schedules of assets and liabilities without objection, waive his constitutional privilege

EDITOR'S NOTE

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to refuse to answer questions respecting them that might tend to incriminate and degrade him. *Arndstein* v. *McCarthy*, 254 U.S. 71, 41 S.Ct. 26, 65 L.Ed. 138, *reh. den.* 254 U.S. 379, 41 S.Ct. 136, 65 L.Ed. 314; *Arndstein* v. *McCarthy*, 254 U.S. 379, 41 S.Ct. 136, 65 L.Ed. 158 (1920); and a witness before a congressional committee who had claimed the Fifth Amendment privilege did not thereafter waive the privilege by answering a question regarding the same matter. *Emspak* v. *United States*, 349 U.S. 190, 75 S.Ct. 687, 99 L.Ed. 997 (1955). Even if a witness consented to testify to an unlawful act, he does not *thereafter* waive his privilege relating to the disclosure of other information of a prosecutorial nature. *Commonwealth* v. *Francis*, 375 N.E.2d 1221, *cert. den.* 439 U.S. 872, 99 S.Ct. 205, 58 L.Ed.2d 185 (1978).

Even where a partial disclosure by an "ordinary" witness is not an actual admission of guilt or incriminating facts, he is not deprived of the privilege of stopping in his testimony whenever it may fairly tend to incriminate him. *McCarthy*, supra, and *Georgia R. & B. Co.* v. *Lybrend*, 99 Ga. 421, 27 S.E. 794 (1896); testimony on direct examination in support of witness' allegations in divorce held not to have waived privilege on cross-examination. *Blais* v. *Blais*, 112 So.2d 860 (1959); *Bishop* v. *Bishop*, 157 Ga. 408, 121 S.E. 305 (1924); *State ex rel. Doran* v. *Doran*, 215 La. 151, 39 So. 894 (1949).

The petitioner has never stated, by word of mouth or in writing, that he wishes to affirmatively waive his privilege against self-incrimination. When dealing with an implied waiver:

". . . the act alleged to constitute the waiver must be carefully appraised and any doubt must be resolved against the waiver. A wiaver must not be lightly inferred." *United States* v. *Steffen*, 103 F.Supp. 415 (N.D. Cal. 1951).

The *Steffen* Court also held that "a waiver to be effective must be certain and unequivocal . . ." *Steffen*, supra at 417.

It is true that prior testimony may be held to be a waiver of the privilege, but if so, the statement must be both testimonial, meaning that it was made in the context of judicial proceeding, and incriminating, meaning that it increases the witness' chances of criminal prosecution or conviction. *E. F. Hutton and Co.* v. *Jupiter Development Corp. Ltd.*, 91 F.R.D. 110 (S.D. N.Y. 1981). However, "the mere fact that a witness has made a prior statement that was both testimonial and incriminating does not necessitate a conclusion that he or she had thereby waived his or her Fifth Amendment privilege against self-incrimination." *Hutton*, supra at 115.

In *Brown* v. *United States*, 356 U.S. 148, 78 S.Ct. 622, 2 L.Ed.2d 589, 72 A.L.R.2d 818, *reh. den.* 356 U.S. 948, 78 S.Ct. 776, 2 L.Ed.2d 822 (1958), the Court indicated that a witness who is compelled to testify has no occasion, and it would be irrelevant for him, to invoke privilege against self-incrimination until testimony sought to be elicited will in fact tend to incriminate; if a witness is to have benefit of self-incrimination privilege and not be confronted with argument that he has waived the right even before he could have invoked it, he must be able to raise bar at point in his testimony when this immunity becomes operative. The

petitioner in the instant case did just exactly that. He sought to invoke the Fifth Amendment privilege after the June 30, 1983 deposition, after discovering the potential for criminal prosecution. His testimony in the June 30, 1983 deposition, was essentially tantamount to the source of income, the amount of income and the reason of the income — not a monologue or dialogue on the entire content of his IRS, VA and SS files.

In this regard, the privilege against self-incrimination must be claimed, and when claimed, it is guaranteed by the Constitution, and witness cannot, upon vague and uncertain evidence, be held, after the claim, to have waived his privilege. *Emspak* v. *United States*, 349 U.S. 190, 75 S.Ct. 687, 99 L.Ed. 997 (1955).

The courts should decide the question of testimonial waiver on a case-by-case basis, *Rogers* v. *United States*, 340 U.S. 367, 71 S.Ct. 438, 95 L.Ed. 344 (1951), and should make its decision upon consideration of the entire context in which the witness spoke. *United States* v. *Goodwin*, 470 F.2d 893 (5th Cir. 1972).

Here, the petitioner spoke at a deposition. After giving certain answers at the deposition, the petitioner was later advised not to respond further. Given the circumstances, it cannot now be said that the petitioner waived his Fifth Amendment privilege by his prior statements. As stated earlier, waiver is not to be lightly inferred, and also, "such constitutional rights are not waived merely by the taking of a deposition." *Independent Products Corporation* v. *Loew's Inc.*, 22 F.R.D. 266 (S.D. N.Y. 1958).

We are here dealing with a civil lawsuit. In a criminal action the petitioner can simply refuse to testify at all; not so in civil cases. In a civil case the petitioner may only refuse to give answers that may tend to incriminate. The petitioner had to attend the deposition; he did not have the luxury of a simple refusal to testify. Answers were given in response to questions at this compelled deposition. Viewed in the totality of the circumstances, it cannot be held that the petitioner has waived his constitutional right not to incriminate himself.

> "We recognize that Courts will indulge every reasonable presumption against a waiver of fundamental constitutional right." *United States* v. *Smothers*, 435 F.2d 209, 211 (7th Cir. 1970).

The *Smothers* Court held further:

> "The determination of whether there has been an intelligent waiver of the right . . . must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id.*

The petitioner maintains that in view of all the circumstances that he has not waived his 5th Amendment privilege in view of the foregoing analysis.

IV. DOES A PERSON HAVE A REASONABLE EXPECTATION OF PRIVACY PURSUANT TO THE PRIVACY ACT OF 1974, IF HE HAS SUBMITTED INFORMATION TO THE UNITED STATES GOVERNMENT IN THE FORM OF VETERANS ADMINISTRATION AND SOCIAL SECURITY ADMINISTRATION RECORDS?

The Privacy Act of 1974 (5 U.S.C. Sec. 552a, *et. seq.*) was established to safeguard the right to privacy of an individual. The Congressional findings and statement of purpose in P.L. 93-579, Sec. 2, 88 Stat. 1896 (December 31, 1974) stated,

"The . . . . finds that . . .:

(4) "the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and . . .

(b)(1) "permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agency;

(b)(2) "permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent."

Further, the term individual means a citizen of the United States . . . (5 U.S.C. Sec. 552a(2) and that "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure would be . . . (11) pursuant to the order of a court of competent jurisdiction."

The Privacy Act extends to all information contained within an agency's system of records that pertains to an individual and can be retrieved by individual's name or by some identifier assigned to him, without regard to content of information or whether it pertains to individual's business activities. *Zeller* v. *United States,* 467 F.Supp. 487 (E.D. N.Y. 1979).

It is clear that Congress intended for an individual to have his records with the government remain confidential unless they were released by him. Absent written consent of individual, any disclosure of information is prohibited unless authorized by one or more of enumerated specific statutory exceptions. *American Federation of Government Employees* v. *Defense General Supply Center,* 423 F. Supp. 481, *aff'd* 573 F.2d 184 (CA4 Va. 1976). Going further in regard to court ordered disclosures of that information, in *Stiles* v. *Atlanta, Gas Light Co.,* 453 F.Supp. 798 (N.D. Ga. 1978), the court stated that under 5 U.S.C. Sec. 552a(b)(11), which provides for release of the record pursuant to a court order, there must be a *compelling* reason for the disclosure and the mere issuance of a subpoena in a discovery proceeding does not meet the standard of compelling reason for disclosure.

This concept of privacy has been reaffirmed in numerous decisions originating from the United States Supreme Court. SEE: *Katz* v. *United States,* 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967); *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); *Roe* v. *Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147, *reh. den.* 410 U.S. 959, 93 S.Ct. 1409, 35 L.Ed.2d 694 (1973).

It is the petitioner's contention that the plaintiff is not entitled to "rummage" through his files since she has not received any benefits therefrom; the benefits were bestowed upon the petitioner several years before he ever met plaintiff, Kay Chambers, and that the petitioner should be entitled to the privacy of his records.

The connection and interplay between the Fourth and Fifth Amendments appear to create a "zone of privacy". See *Griswold* v. *Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); and federal law reflects a dual purpose, one of which is protection of privacy and the other, protection against compulsory production of evidence to be used against him. *Davis* v. *United States*, 328 U.S. 582, 66 S.Ct. 1256, 90 L.Ed. 1453, *reh. den.* 329 U.S. 824, 67 S.Ct. 107, 91 L.Ed. 700 (1946); and bars state intrusion into the compulsory production of the inner sanctum of individual feeeling and thought, and an individual's papers and effects. *Bellis* v. *United States*, 417 U.S. 85, 94 S.Ct. 2179, 40 L.Ed.2d 678 (1979).

SUMMARY

It is evident from the foregoing analysis that the Fifth Amendment applies to civil proceedings. The petitioner should be entitled to a prohibition against the trial judge, prohibiting the Honorable William N. Henderson from forcing him to turn over records or give further testimony in regard to those records since he has a valid Fifth Amendment privilege in regard to his SS and VA files and records. He has not waived his Fifth Amendment privilege by giving partial evidence of his SS and VA files, and in fact

was under compulsion to attend that deposition. He should be accorded the additional protection of the privacy of his records with the respective governmental agencies pursuant to the Privacy Act of 1974.

CONCLUSION

For the reasons hereabove set forth, the Petition should be granted and a Writ of Certiorari should issue to the Oklahoma Supreme Court.

Respectfully submitted,

ARNOLD FAGIN
531 Couch Drive
Oklahoma City, Oklahoma 73102
Tel.: (405) 239-6771

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17 East 1st, P.O. Box 1300
Edmond, Oklahoma 73083-1300
Tel.: (405) 341-1654

Counsel of Record for Petitioner

March, 1985

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ..... day of March, 1985, three (3) true and correct copies of the above and foregoing Petition for Writ of Certiorari were mailed with first class postage thereon prepaid, return receipt requested, to the Honorable William Henderson, Oklahoma County Courthouse, 321 Park Avenue, Oklahoma City, Oklahoma 73102; Mr. Bryce Baggett, 200 Northwest 63rd, Oklahoma City, Oklahoma, 73116; Mr. Jon Hester, 5400 N. Grand Boulevard, Suite 365, Oklahoma City, Oklahoma, 73112; Mr. Michael Tullius, 217 North Harvey, Suite 300, Oklahoma City, Oklahoma, 73102; and to Mr. Robert L. Johnson, 5901 North Western, Oklahoma City, Oklahoma, 73118.

The above listed parties are all of the parties required to be served.

_____

Sidney D. Brown

APPENDICES

APPENDIX A

[Filed Jan. 23, 1985]

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

Wednesday, January 23, 1985

THE CLERK IS DIRECTED TO ISSUE
THE FOLLOWING ORDERS:

* * *

63,514 Thomas A. Chambers, Jr. v. The Hon. William Henderson, Judge of the District Court of Oklahoma County, Oklahoma.

Application to assume original jursdiction denied.

CONCUR: Doolin, V.C.J., Lavender, Barnes, Hargrave, Opala, Wilson, Kauger, JJ.

DISSENT: Simms, C.J., Hodges, J.

* * *

APPENDIX B

[Filed Dec. 10, 1984]

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

KAY CHAMBERS, Plaintiff,	)	
vs.	)	
	)	No. JFD-
THOMAS A. CHAMBERS, JR., ANITA G. CHAMBERS, RUSSELL A. CHAMBERS, and STANLEY E. RIEMERS, Defendants.	)	83-3647

This matter came on to be heard on the 26th day of October, 1984, upon plaintiff's two motions filed June 29, 1984, for orders to compel the defendant Thomas A. Chambers, Jr. to execute his written consent and permission for the plaintiff to inspect and copy his records in the Veterans Administration and the Social Security Administration, the plaintiff appearing in person and by her attorney Bryce A. Baggett and the defendant Thomas A. Chambers, Jr. appearing in person and by his attorneys Sidney D. Brown and Arnold D. Fagin, and the Court proceeded to receive the arguments and objections of the parties as follows:

1. Plaintiff contended that in the first pretrial conference on June 29, 1984, Arnold D. Fagin as attorney for Thomas A. Chambers, Jr. agreed that such defendant would execute upon forms to be prepared by plaintiff's attorney, his written consent and permission for the plaintiff and her attorney to inspect his records in the Veterans Administration and the Social Security Administration, and that the Court ordered the defendant Thomas A. Chambers, Jr. to do so.

2. Mr. Baggett stated that on July 16, 1984, he had prepared and mailed to Mr. Fagin for execution by defend-

ant Thomas A. Chambers, Jr. the original and two copies each of three VA forms 60-3288 entitled "Request For And Consent To Release Of Information From Records" directed to the Veterans Administration in Muskogee and the Veterans Administration Hospital here in Oklahoma City and to the Social Security Administration.

3. Mr. Fagin disputed Mr. Baggett's version of what had transpired at the first pretrial conference (which, unfortunately, was not recorded by a reporter) and said that he had not agreed that Thomas A. Chambers, Jr. would execute such written consents and permission for the plaintiff and her attorney to inspect and copy his records in the Veterans Administration and the Social Security Administration, and further, that Mr. Fagin lacked authority to make such an agreement on behalf of Thomas A. Chambers, Jr.

4. Further, on behalf of the defendant Thomas A. Chambers, Jr., Mr. Fagin invoked and claimed against the plaintiff's request and said motions, his privilege against self-incrimination under Article V of the Constitution of the United States and Section 21 of Article II of the Constitution of Oklahoma.

5. On behalf of the plaintiff, Mr. Baggett argued that the privilege against self-incrimination was applicable only to documents under the exclusive possession and control of the defendant Thomas A. Chambers, Jr.; and that the privilege was not applicable to any documents already in the custody and possession of the Veterans Administration and Social Security Administration because the fact of such custody and possession by those agencies clearly establishes that the defendant has heretofore published all such documents in those records by delivering custody and possession of them to the Veterans Administration and the Social Security Administration.

6. Further, Mr. Baggett argued that on behalf of the plaintiff the defendant Thomas A. Chambers, Jr. had waived the privilege against self-incrimination as to the matters and records of the Veterans Administration and the Social Security Administration by testifying under oath without objections and without invoking the privilege against self-incrimination at the first opportunity to do so when those matters were the subject of 45 questions posed to him in his deposition in this case on June 30, 1983, in the presence of and while he had the assistance of his counsel, Sidney D. Brown, at such deposition.

After receiving the claim of self-incrimination of Thomas A. Chambers, Jr. and receiving the arguments of counsel as set forth above, the Court took this matter under advisement and directed the attorney for plaintiff to file a brief in support of his arguments and to submit excerpts from the deposition of Thomas A. Chambers, Jr. reflecting that he had been asked and had answered without invoking the privilege against self-incrimination questions concerning the matters in the records of the Veterans Administration and Social Security Administration, and the Court on November 13, 1984, received such brief of the plaintiff and pages 1, 2, 43 through 50, of the deposition of Thomas A. Chambers, Jr. and has considered the same, and the Court FINDS and DETERMINES:

1. That on June 30, 1983, in a deposition conducted by plaintiff's attorney, Bryce A. Baggett, and during which the defendant Thomas A. Chambers, Jr. was sworn and under oath and had the assistance of his counsel, Sidney D. Brown, approximately 45 questions were posed to Thomas A. Chambers, Jr. by the attorney for the plaintiff concerning his dealings with and matters involving his records with the Veterans Administration and Social Security Administration, which question such defendant answered, albeit sometimes evasively, without invoking or claiming the privilege against self-incrimination as to those matters.

2. The privilege against self-incrimination is applicable to documents which are exclusively within the custody, possession and control of the person invoking such privilege, but once such person has published those documents by delivering them to any other person who is not an agent of such person claiming the privilege, such publication vitiates the factual basis for invoking and claiming the privilege against self-incrimination. The fact that his records are in the possession and control of the Veterans Administration and Social Security Administration established that the documents comprising those records are not within the exclusive custody, possession and control of Thomas A. Chambers, Jr. and the privilege is inapplicable. Moreover, in this case, the delivery by Thomas A. Chambers, Jr. to the Veterans Administration and the Social Security Administration of the documents comprising his records in those two agencies of the United States has waived and made inapplicable thereto his privilege against self-incrimination.

3. Moreover, by testifying under oath affirmatively in response to questions on the subject of his dealings with and his records in the Veterans Administration and Social Security Administration without invoking and claiming the privilege against self-incrimination at his first opportunity to do so, the defendant Thomas A. Chambers, Jr. has waived his privilege against self-incrimination as to those records in the Veterans Administration and the Social Security Administration.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant Thomas A. Chambers, Jr. be and he hereby is ORDERED and DIRECTED to execute and deliver to the plaintiff three copies each of those three VA Forms 3288 entitled "Request For And Consent To Release Of Information From Records" which are attached hereto, addressed to the Veterans Administration in Muskogee and to the Veterans Administration Hospital in Okla-

homa City, and to the Social Security Administration as and for the written consent and permission by Thomas A. Chambers, Jr. for the plaintiff and her attorney to inspect and copy his records in the Veterans Administration and the Social Security Administration, such consent to be executed and delivered to the plaintiff and her attorney by Thomas A. Chambers, Jr. within 48 hours of the receipt of a certified copy of this order by such defendant or by his attorneys.

/s/ William H. Henderson
Judge of the District Court

Dated this 7th day of December, 1984.

APPENDIX C

Fifth Amendment
to the
United States Constitution

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

APPENDIX D

Fourteenth Amendment to the United States Constitution

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E

5 U.S.C. SEC. 552a

SEC. 552a. Records maintained on individuals.

(a) Definitions. For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title [5 U.S.C.S. Sec. 552(e)];

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a pur-

pose which is compatible with the purpose for which it was collected.

(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title [5 U.S.C.S. Sec. 552];

(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 [13 U.S.C.S. Sec. 1 et seq.];

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforce-

ment activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of competent jurisdiction.

(c) Accounting of Certain Disclosures. Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)

(1) or (b) (2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accuate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the proced-

ures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

[APPENDIX]

(e) Agency Requirements. Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources or records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency Rules. In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title [5 U.S.C.S. Sec. 553], which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies. Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to

make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court

may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency

has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure prior to September 27, 1975.

(h) Rights of Legal Guardians. For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) Criminal Penalties. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice of requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 U.S.C.S. Sec. 553(b)(1)-(3), (c), and (e)], to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 U.S.C.S. Sec. 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. The head of any agency may promulgate rules, in accordance with the requirements (in-

cluding general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title [5 U.S.C.S. Sec. 553(b)(1), (2), (3), (c), and (e)], to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title [5 U.S.C.S. Sec. 552(b)(1)];

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 [18 U.S.C.S. Sec. 3056];

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualfications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who fur-

nished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title [5 U.S.C.S. Sec. 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(1) (1) Archival Records. Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 [44 U.S.C.S. Sec. 3103] shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section [effective 270 days following Dec. 31, 1974], shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsection (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government Contractors. When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) Mailing Lists. An individual's name and address may not be sold or rented by an agency unless such action is

specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Report on New Systems. Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) Annual Report. The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) Effect of Other Laws. No agency shall rely on any exemption contained in section 552 of this title [5 U.S.C.S. Sec. 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

APPENDIX F

42 U.S.C. SEC 1306

SEC. 1306. Disclosure of information in possession of agency.

(a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the Secretary by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health, Education, and Welfare in the course of discharging the duties of the Secretary under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any office or employee of the Department of Health, Education, and Welfare, shall be made except as the Secretary may by regulations prescribe. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be pnished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of funishing the information or services), as may be determined by the Secretary. Payments for infor-

mation or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare which furnished the information or services.

(c) (1) (A) Upon request (filed in accordance with paragraph (2) of this subsection) of any State or local agency participating in administration of the State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV [42 U.S.C.S. Sec. 301-304, 306, 601-610, 1201-1204, 1206, 1351-1355, 1381, 1381a, 1382-1382e, 1383-1383, 1396-1396d, 1396f-1396i], or participating in the administration of any other State or local public assistance program, for the most recent address of any individual included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 205 [42 U.S.C.S. Sec. 405], the Secretary shall furnish such address, or the address of the most recent employer, or both, if such agency certifies that—

(i) an order has been issued by a court of competent juirdsiction against such individual for the support and maintenance of his child or children who are under the age of 16 in destitute or necessitous circumstances,

(ii) such child or children are applicants for or recipients of assistance available under such a plan or program,

(iii) such agency has attempted without success to secure such information from all other sources reasonably available to it, and

(iv) such information is requested (for its own use, or on the request and for the use of the court which issued the order) for the purpose of obtaining such support and maintenance.

(B) If a request for the most recent address of any individual so included is filed (in accordance with paragraph (2) of this subsection) by a court having jurisdiction to issue orders or entertain petitions against individuals for the support and maintenance of their children, the Secretary shall furnish such address, or the address of the individual's most recent employer, or both, for the use of the court (and for no other purpose) in issuing or determining whether to issue such an order against such individual or in determining (in the event such individual is not within the jurisdiction of the court) the court to which a petition for support and maintenance against such individual should be forwarded under any reciprocal arrangements with other States to obtain or improve court orders for support, if the court certifies that the information is requested for such use.

(2) A request under paragraph (1) shall be filed in such manner and form as the Secretary may prescribe (and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof).

(3) The penalties provided in the second sentence of subsection (a) shall apply with respect to use of information provided under paragraph (1) of this subsection except for the purpose authorized by subparagraph (A)(iv) or (B) thereof.

(4) The Secretary, in such cases and to such extent as he may prescribe in accordance with regulations, may require payment for the cost of information provided under paragraph (1); and the provisions of the second

sentence of subsection (b) shall apply with respect to payment under this paragraph.

(d) Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under title XIX [42 U.S.C.S. Sec. 1396-1396d 1396f-1396i] and shall, subject to the limitations contained in subsection (e), make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by titles XVIII and XIX [42 U.S.C.S. Sec. 1395-1395b, 1395c-1395i-2, 1395j-1395w, 1395x-1395dd, 1395ff-1395pp, 1396-1396d, 1396f-1396i]—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(e) No report described in subsection (d) shall be made public by the Secretary or the State title XIX [42 U.S.C.S. Sec. 1396-1396d, 1396f-1396i] agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public re-

port; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

APPENDIX G

38 U.S.C. SEC 3301

CHAPTER 57—RECORDS AND INVESTIGATIONS

SUBCHAPTER 1—RECORDS

SEC. 3301. Confidential nature of claims.

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of Veterans' Administration shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.

(b) The Administrator shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representatve of a claimant as to matters concerning the claimant alone when, in the judgment of the Administrator, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 4009 of this title [38 U.S.C.S. Sec. 4009].

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental compentency of a claimant.

(5) In any suit or other judicial proceeding when in the judgment of the Administrator such disclosure is deemed necessary and proper.

(6) In connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Veterans' Administration when in the judgment of the Administrator such disclosure is deemed necessary and proper.

(c) (1) The amount of any payment made by the Veterans' Administration to any person receiving benefits under a program administered by the Veterans' Administration shall be made known to any person who applies for such information.

(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Veterans' Administration in connection with any loan guaranteed, insured, or made under chapter 37 of this title [38 U.S.C.S. Sec. 1801 et seq.] shall be made available to any person who applies for such report or certificate.

(3) Subject to the approval of the President, the Administrator may publish at any time and in any manner any or all information of record pertaining to any claim filed with the Veterans' Administration if the Administrator determines that the public interest warrants or requires such publication.

(d) The Administrator as a matter of discretion may authorize an inspection of Veterans' Administration records of duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Administrator may release information, statistics, or reports to individuals or organizations when in the Administrator's judgment such release would serve a useful purpose.

(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces, (1) to any nonprofit organization if the

release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

(g) (1) Subject to the provisions of this subsection, and under regulations which the Administrator shall prescribe, the Administrator may release the name or address, or both, of any person who is a present or former member of the Armed Forces, or who is a dependent of a present or former member of the Armed Forces, to a consumer reporting agency if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection concerning a person described in such paragraph may be made for the purpose of—

(A) locating such a person—

(i) who has been administratively determined to be indebted to the United States by virtue of the person's participation in a benefits program administered by the Veterans' Administration; or (ii) if the Administrator has determined under such regulations that (I) it is necessary to locate such person in order to conduct a study pursuant

to section 219 of this title [38 U.S.C.S. Sec 219] or a study required by any other provision of law, and (II) all reasonable steps have been taken to assure that the release of such information to such reporting agency will not have an adverse effect on such person; or

(B) obtaining a consumer report in order to assess the ability of a person described in clause (A) (i) of this paragraph to repay the indebtedness of such person to the United States, but the Administrator may release the name or address of such person for the purpose stated in this clause only if the Administrator determines under such regulations that such person has failed to respond appropriately to administrative efforts to collect such indebtedness.

(3) The Administrator may also release to a consumer reporting agency, for the purposes specified iin clause (A) or (B) of paragraph (2) of this subsection, such other information as the Administrator determines under such regulations is reasonably necessary to identify a person described in such paragraph, except that the Administrator may not release to a consumer reporting agency any information which indicates any indebtedness on the part of such person to the United States or any information which reflects adversely on such person. Before releasing any information under this paragraph, the Administrator shall, under such regulations, take reasonable steps to provide for the protection of the personal privacy of persons about whom information is proposed to be released under this paragraph.

(4) (A) If the Administrator determines, under regulations which the Administrator shall prescribe, that a person described in paragraph (1) of this subsection has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness of

such person described in paragraph (2)(A)(i) of this subsection, the Administrator may release information concerning the indebtedness, including the name and address of such person, to a consumer reporting agency for the purpose of making such information available for inclusion in consumer reports regarding such person and, if necessary, for the purpose of locating such person, if—

(i) the Administrator has (I) made reasonable efforts to notify such person of such person's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and of such person's right to request a waiver of such indebtedness under section 3102 of this title [38 U.S.C.S. sec 3102], (II) afforded such person a reasonable opportunity to exercise such rights, and (III) made a determination with respect to any such dispute or request; and

(ii) thirty calendar days have elapsed after the day on which the Administrator has made a determination that reasonable efforts have been made to notify such person (I) that the Administrator intends to release such information for such purposes, and (II) that, upon the request of such person, the Administrator shall inform such person of whether such information has been so released and of the name and address of each consumer reporting agency to which such information was released by the Administrator and of the specific information so released.

(B) After release of any information under subparagraph (A) of this paragraph concerning the indebtedness of any person, the Administrator shall promptly notify—

(i) each consumer reporting agency to which such information has been released by the Administra-

tor; and (ii) each consumer reporting agency described in subsection (i)(3)(B)(i) of this section to which such information has been transmitted by the Administrator through a consumer reporting agency described in subsection (i)(3)(B)(ii)(I) of this section,

of any substantial change in the status or amount of such indebtedness and, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly verify or correct, as appropriate, such information The Administrator shall also, after the release of such information, inform such person, upon the request of such person, of the name and address of each consumer reporting agency described in clause (i) or (ii) of this subparagraph to which such information was release or transmitted by the Administrator and of the specific information so released or transmitted.

(h)(1) Under regulations which the Administrator shall prescribe, the Administrator may release the name or address, or both, of any person who is a present or former member of the Armed Forces (and other information relating to the identity of such person), to any person in a category of persons described in such regulations and specified in such regulations as a category of persons to whom such information may be released, if the release of such information is necessary for a purpose described in paragraph (2) of this subsection.

(2) A release of information under paragraph (1) of this subsection may be made for the purpose of—

(A) determining the creditworthiness, credit capacity, income, or financial resources of a person who has (i) applied for any benefit under chapter 37 of this title [38 U.S.C.S. Sec. 1801, et seq.], or (ii) submitted an offer to the Administrator under Section 1820(a)(5) of this title [38 U.S.C.S. Sec. 1820(a)(5)]

(B) verifying, either before or after the Administrator has approved a person's application for assistance in the form of a loan guaranty or loan insurance under chapter 37 of this title [38 U.S.C.S. Sec. 1801 et seq.], information submitted by a lender to the Administrator regarding the creditworthiness, credit capacity, income, or financial resources of such person;

(C) offering for sale or other disposition by the Administrator, pursuant to section 1820 of this title [38 U.S.C.S. Sec. 1820], any loan or installment sale contract owned or held by the Administrator; or

(D) providing assistance to any applicant for benefits under chapter 37 of this title [38 U.S.C.S. Sec. 1801 et seq.] or administering such benefits if the Administrator promptly records the fact of such release in appropriate records pertaining to the person concerning whom such release was made.

(i) (1) No contract entered into for any of the purposes of subsection (g) or (h) of this section, and no action taken pursuant to any such contract or either such subsection, shall result in the application of section 552a of title 5 [5 U.S.C.S. Sec. 552a] to any consumer reporting agency or any employee of a consumer reporting agency.

(2) The Administrator shall take reasonable steps to provide for the protection of the personal privacy of persons about whom information is disclosed under subsection (g) or (h) of this section.

(3) For the purposes of this subsection and of subsection (g) of this section—

(A) The term "consumer report" has the meaning provided such term in subsection (d) of section 603 of the Fair Credit Reporting Act [15 U.S.C. Sec. 1681a(d)].

(B) The term "consumer reporting agency" means—

(i) a consumer reporting agency as such term is defined in subsection (f) of section 603 of the Fair Credit Reporting Act [15 U.S.C. Sec. 1681(f)], or (ii) any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit or other information on consumers for the purpose of furnishing such information to consumer reporting agencies (as defined in clause (i) of this paragraph), or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such reporting agencies

(j) Except as provided in subsection (i)(1) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5 [5 U.S.C. Sec. 552a].